

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DANIEL PENNA,

Plaintiff,

v.

NORTH CLACKAMAS SCHOOL DISTRICT,
and the OREGON DEPARTMENT OF
EDUCATION, ODE agents JOHN DOES 1-3,
NCSD agents JOHN DOES 1-3, RYAN
RICHARDSON, CHELSI RENO, COLT GILL,
former GOVERNOR KATE BROWN in her
personal and official capacity,

Defendants.

Case No.: 3:22-cv-01417-YY

ORDER

Adrienne Nelson, District Judge

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on August 11, 2023. Judge You recommended that this Court dismiss plaintiff's federal claims with prejudice and dismiss any remaining state law claims without prejudice. Plaintiff filed objections.

A district court judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If any party files objections to a magistrate judge's proposed findings and recommendations, "the court shall make a de novo determination of those portions of the report." *Id.* If no objections are filed, then no standard of review applies. However, further review by the district court *sua sponte* is not prohibited. *Thomas v. Arn*, 474 U.S. 140, 154 (1985). The Advisory Committee notes to Federal Rule of Civil Procedure 72(b) recommend that unobjected to proposed findings and recommendations be reviewed for "clear error on the face of the record." Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment.

Upon review, I agree with Judge You's recommendation, but MODIFY the Findings and Recommendation, ECF [39], to clarify dismissal of plaintiff's Eleventh Claim for Relief. Def.'s Resp. to Pl.'s Objections to F&R, ECF [47], at 5. Defendants request that the Court clarify, in its review, whether

that claim survives. As the Court dismisses all of plaintiff's claims, plaintiff's claim for equitable relief also fails. *Harney v. Assoc. Materials, LLC*, 2018 WL 468303, *8 (D. Or. Jan. 18, 2018). Defendants' motions to dismiss, ECF [18] and ECF [24], are GRANTED in part and DENIED in part. Plaintiff's federal claims are DISMISSED with prejudice, and any remaining state law claims are DISMISSED without prejudice.

IT IS SO ORDERED.

DATED this 17th day of October, 2023.



Adrienne Nelson
United States District Judge